IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

WEDNESDAY, THE 26TH SEPTEMBER 2007 / 4TH ASWINA 1929

WP(C).No. 23823 of 2007(J)

PETITIONER:

MARIAMMA, W/O. MATHAI,
AATHUNGAL HOUSE, VENGOOR KARA, VENGOOR VILLAGE.

BY ADV. SRI.DINESH R.SHENOY

RESPONDENTS:
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1. POULOSE, S/O. YOYAKI,
PADIKKAKUDIYIL HOUSE, PUZHUKKADU KARA,
VENGOOR WEST VILLAGE.

2. JOHNY, S/O. KURIAKOSE,
KUNNETHUKUDY, PUZHUKKAD KARA, VENGOOR EAST VILLAGE.

3. MARY, W/O. JOHNY,
-DO- -DO-

BY ADV. SRI.S.VINOD BHAT

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 26/09/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C) NO: 23823/2007 J

APPENDIX

PETITIONER'S EXHIBITS,

EXT.P1. COPY OF THE CERTIFICATE COPY OF SALE DEED NO. 1704/88 (EXHIBIT A1 IN O.S. NO. 50/91)

EXT.P2. COPY OF THE ALLEGED WILL DT. 26/10/81.

EXT.P3. COPY OF THE MEMORANDUM OF APPEAL IN AS NO. 50/07, SUB COURT, PERUMBAVOOR.

EXT.P4. COPY OF THE INTERIM APPLICATION DT. 10/3/2005 FILED IN A.S. NO. 53/04, SUB COURT, NORTH PARVUR.

EXT.P5. COPY OF THE IA NO. 527/07 IN AS NO. 50/07, SUB COURT, PERUMBAVOOR.

EXT.P6. COPY OF THE SALE DEED NO. 4890/1979, PERUMBAVOOR SRO.

EXT.P7. COPY OF THE ORDER DT. 13/7/2007, AND I.A. NO. 527/07 IN AS NO. 50/07.

RESPONDENT'S EXHIBITS **NIL.**

True copy

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M.N. KRISHNAN, J.

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W.P.C. NO. 23823 OF 2007

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Dated this the 26th day of September, 2007.

J U D G M E N T

This writ petition is filed challenging the order of the Subordinate Judge, Perumbavoor which is produced as Ext.P7 in this case. The petition was filed for reception of documents under Order 41 Rule 27 of the CPC as additional evidence. The Court considered and held that the documents cannot be received at that stage and therefore dismissed the application.

2. The learned counsel for the respondents submitted before me a decision of the Apex Court reported in **State of Rajasthan v. T.N. Sahani (2001 (10) SCC 619)**. It was also a case where the reception of the document was rejected at an earlier stage before hearing of the appeal. The Apex Court held that "Application for, should be decided along with appeal considering the necessity of documents, sought to be adduced as additional evidence for pronouncing the judgment more satisfactorily." A complete reading of the

decision would show that when documents are to be received under Order 41 Rule 27(b) of CPC, in order to analyze about the importance or necessity to receive the document it is always desired that the matter to be heard along with appeal so that the Court will have a complete picture before it regarding the facts and necessity of such documents whether to be considered for a proper determination of the matter. Therefore, I find that the Court should have considered the application along with the appeal instead of deciding it independently at an earlier stage. Therefore, the order under challenge is set aside and the petition to receive document is restored and the appellate court is directed to consider the acceptability or otherwise of document under Order 41 Rule 27 along with the appeal in accordance with law.

The writ petition is disposed of accordingly.

M.N. KRISHNAN, JUDGE.

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